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THE CHILD AND THE LAW

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While my theme is "The Child and the Law," the subject uppermost in my mind is the child who is unprotected by law or is exploited in violation of law. My theme is rather, "Lawlessness in Its Effect Upon the Child," and I use the word lawlessness as meaning either a low standard of legislation, or legislation that is so defective as to encourage evasion of the law, or its violation, and particularly that spirit of lawlessness that scorns concealment and is open and shameless in its workings. It is these symptoms of a widespread evil that I shall attempt to discuss, their disastrous effect upon the child, and perhaps the effect of the appeal of childhood for protection.

I once attended with some newspaper friends an old-time negro camp meeting in North Carolina. During the exercises—rightly so called—a collection was taken, one of the officials waiting upon the white people and another upon the colored people. The latter reported the result thus: "I have to thank the colored people for three dollars and sixty-seven cents." The other report began: "I have to thank the white people for six dollars and——" "Don't tell it," said the preacher, with a gesture of protest. "When the white people beat the colored people, don't tell it."

I confess to some sympathy with the sentiment of pride that prompted the colored preacher to protect his own people from a disagreeable comparison. I am the more embarrassed since my paper is a report from the field of work assigned to me, the Southern States, and I am to make this report within the borders of a state that has reached, in my judgment, the highest standard of legislation for the protection of the children that has been attained by any American state, and is most conspicuous for its effective enforcement of the law and the punishment of transgressors. Yet when I think of the children whose fate is involved, I am resolved to tell the truth, as I see it. For the

knowledge of the facts must precede the proper treatment of any evil. Moreover, in the recital of these facts and in the earnest protest against lawlessness, as regards the welfare of the children, I am not speaking of the South as a whole, but of a part of it only. I beg leave to make the broad distinction between the great majority of the Southern people, whose traditions of humanity and kind-heartedness are proverbial; whose willingness to sacrifice all material interests for the sake of a principle won the admiration of the world—to distinguish between the South and what is sometimes called The New South. The Old South was commercial; the New South has become commercialized. The people of the South who call themselves The New South have made the term unpopular among our people, and they are sometimes called The Mercenaries.

The most familiar illustration among us of the sentiments of the Mercenaries is that of the ship, loaded with an equal weight of gold and babies, floundering in the seas and demanding lightening. We say that the Mercenaries would cry, "Overboard with the babies and save the gold." The South would say, "Let the gold go to the bottom, and the Mercenaries, too, but save the babies." For, in spite of all that may be said and that may be here said, the South loves her children. She has a great many of them to love. The population of Massachusetts exceeds the population of Georgia by 600,000. But the children of school age in Georgia exceed in number the children of school age in Massachusetts by 100,000.

It is no longer an open question in this nation whether law is needed for the protection of the children against the exploiters of their labor. It is perhaps a disgrace to our civilization that there is such need, but it would be a worse disgrace if the facts were not recognized and the need met. To the employer who creates the demand for child labor, to the ignorant or unnatural parent who would supply that demand, the law says, "Thou shalt not."

In such restriction of child labor the common judgment of both America and Europe has reached the conclusion that fourteen years is the limit below which children should not be employed for gain, save in work on the farm in the interval between school sessions. It is also virtually agreed that there should

be regulation by law for children under sixteen, at least, such regulation including the prohibition of night work, the shortening of the hours of labor by day and the protection of the children against dangerous machinery and against unsanitary and immoral conditions, which the children, naturally, are helpless to remedy. It is also virtually agreed, in the experience of the nations of Europe and the American states, that along with the prohibition of labor for children should go the compulsion to attend school. Experience has also taught that a child-labor law is a "law without a friend" for its enforcement. Employers, parents, and in some instances the children themselves are opposed to its enforcement. The private citizen who attempts to investigate the evil may himself be convicted of trespass upon private property. Therefore, the absolute necessity of official factory and mine inspection, with power to investigate and with power to prosecute the violators of the law. In the light of this substantial agreement among civilized states and nations as to the standard of legislation and the methods of law enforcement, let us see in a brief survey of the field how far the Southern States have advanced toward this standard. It should be remembered in this connection that practically all advance has been within the last five years.

Kentucky, Tennessee, Louisiana and Arkansas have already reached the fourteen-year age limit, though Arkansas permits children between the ages of twelve and fourteen, who are orphans or the children of dependent parents, to be employed—a vicious exception, of course, to the general law. Virginia reaches the thirteen-year age limit in 1909 and the fourteen-year age limit in 1910. North Carolina has fixed the thirteen-year age limit, and a bill has been introduced into the North Carolina legislature, now in session, changing the age limit to fourteen. South Carolina, Florida, Georgia, Alabama, Mississippi and Texas have a twelve-year age limit. Georgia permits children between ten and twelve to be employed, and South Carolina children of any age who are already handicapped by partial or complete orphanage. Texas has an age limit of sixteen for mines, and Oklahoma the same, though the child-labor bill proper, after having passed the legislature of Oklahoma, was vetoed by Governor Haskell (for which action, it may be remembered, he was Presidentially rebuked). These laws of the Southern

States apply generally to child labor in factories only, the evil being comparatively small as yet in mines and except in a few of the larger cities, in mercantile establishments and in the street trades.

In regard to the hours of labor for the children who are allowed to work, the ten-hour day generally prevails, though in Alabama and Tennessee it is a sixty-hour week, which allows, as in Pennsylvania, more than a ten-hour day, and in Georgia and North Carolina a sixty-six-hour week, which, with the usual half-holiday on Saturday given to employees in the cotton mills, means a twelve-hour day for the other days of the week. Night work is prohibited for children under sixteen in Alabama and Mississippi; in South Carolina and Florida, for children under twelve, and in the other Southern states for children under fourteen. As to compulsory attendance upon school, Kentucky and Oklahoma have a compulsory law for children under fourteen; Virginia for children under twelve; North Carolina has a sort of local option compulsory attendance law, which was enthusiastically advocated by the cotton manufacturers, who, at last accounts, have unanimously neglected to put their own villages under the operation of the law. The manufacturers of South Carolina this month agreed to advocate a compulsory education bill for children under fourteen, which is an advance of two years over their previous concession, and to agree to the same age limit for the child-labor law if the compulsory education bill shall pass, experience having demonstrated that this is a tolerably safe condition for amending the child-labor statute. Georgia, Alabama, Arkansas and Texas have an age limit of fourteen for illiterate children, while Alabama requires children employed to attend school three months a year until they are sixteen, and Georgia until they are eighteen.

So much for the standard of legislation to which the Southern States have attained. The legislatures of several of these states are in session now or are to meet during the year, and I trust that this review of the legislative status will become antiquated before it is printed. Perhaps it may be said that the advance from no legislation at all to the present standard in the last six years has been more rapid than any similar advance in either America or Europe, for a similarly large population. But when we come to consider the enforcement of the law by the authorities or its observance by

those affected, we may as well begin with the frank admission that there is almost no enforcement and that the violations, even of the poorest laws we have, are open, shameless and innumerable. Except in Kentucky and Louisiana there have been no prosecutions for violation of the law so far as I have been able to learn.

The opportunities for nominal compliance with the law on the part of the employer, while violating its spirit, are abundant, and for this the manufacturers are responsible through the compromises they have been able to write in the laws. Only Kentucky and Louisiana have anything like a fair system for issuing the certificates of employment. In the other states the affidavit of the parent made before a magistrate who may himself be in the employ of the factory is deemed sufficient to insure accuracy. In North Carolina only the written statement of the parent is required; in South Carolina the certificate relates only to children under twelve. Florida and Texas require no proof of age. Virginia in her lately amended law, however, instead of the cumbersome and generally ineffective certificate system, which is usually simply a means of protection to the employer, added this short and sharp provision, that the employment of children under the legal age should be deemed *prima facie* evidence of guilt on the part of both employer and parent. That is at least a great deal better than the immunity bath in the laws of North and South Carolina, recently slipped into the Alabama law, that the employer must "knowingly and wilfully" violate its provisions as to employing children under the legal age. It is difficult to know certainly the age of other people's children, and where ignorance is immunity, 'tis folly to be wise.

In the Carolinas, especially in South Carolina, where it is easy enough to employ the smallest children in accordance with law, a child is not deemed employed when "helping" an older member of the family at piece-work, so long as the child's name does not appear on the payroll and he does not receive the wages himself. Of course, the difference of the effect of premature toil upon the child, himself, through the absence of his name from the payroll, is obvious! Before the passage of the child-labor law in Georgia, the manufacturers who had entered into an agreement not to employ children under specified ages, suborned their own consciences by a similar expedient. The remedy for this is the provision that the child shall not be permitted to work in or about the place

of employment. As to the certificates required by law, they are almost wholly disregarded, their protection not even being deemed necessary by the employers.

Again, except in Kentucky and Louisiana, there is no adequate provision for factory inspection. Alabama has an inspector and an assistant, who are "inspectors of jails and factories." Thus far the inspector's office has been unable to cope with the task of factory inspection. Tennessee and Virginia have the beginnings of a system of factory inspection, and Mississippi requires the sheriff of each county and an officer of the board of health of each county to inspect the factories located within the county, the sheriff being required to visit the factories once each month. This may prove of temporary value in a rural state with few factories. The North Carolina Labor Commissioner has no authority to enter a factory, and the commissioner whose term has expired made a regular report that he had no complaints as to the violations of the law. As in the case of the death of the unpopular neighbor, there was no complaint. Everybody concerned was satisfied.

In addition, North Carolina, South Carolina, Georgia, Florida, Arkansas and Texas have no officials for investigating the facts as to the employment of children, and only the ordinary processes of the law for the enforcement of the child-labor law. Under these conditions, a low standard of legislation, numerous loopholes in the laws that we have, the general absence of factory inspection, and of compulsory education, the great ally of child-labor legislation, together with an urgent demand for labor in the cotton factories, it would only be natural if the violations of the law were scandalous in their frequency.

I am able to prove this by ocular demonstration, through the medium of the stereopticon or the photograph, to any one not physically or morally blind. During the year 1908 investigations directed from our Southern office in Atlanta were made in Mississippi, Alabama, Georgia, North and South Carolina and Virginia. The Virginia manufacturers seemed more sensitive to public opinion, and while violations even of the twelve-year age limit then in force were frequent, few children were found at work who were under ten years of age. Through the operation of the provisions requiring children under eighteen in Georgia, and under sixteen in Alabama, to attend school, there was some show of observance of the law in

these two states. Mississippi had no child-labor law at the time of the investigation, and from the most careful comparison of the reports of three different investigators in North Carolina and South Carolina, two of them making photographic records, I am convinced that the conditions, while bad enough in Mississippi, were no worse, there, in a state without law, than in North Carolina, with a thirteen-year age limit, and that they were worse in South Carolina than in either state or in any state of the Union for that matter, except that North Carolina occupies the chief eminence for the employment of children at night, and during a working night of twelve hours.

Many words could not make this plainer. Children from seven years old upward were found at work in the mills; children of ten years of age were found on the night shift. Children of twelve and thirteen, now beyond the protection of the law, had been working in spite of its supposed protection since they were six or seven. This is child labor from one point of view. It is child murder from another point of view. How the very respectable gentlemen who engage in it, or the philanthropic stockholders who permit it, can hope to escape the execration of mankind when the facts are known is beyond comprehension. The Herods have not been popular in the judgment of history.

Another bad result of this lawlessness on the part of the employer is the example for the child of disobedience to law and the practice of deception. While in the great majority of mill villages the amazing thing was the unconsciousness of wrong-doing, of actual criminality, on the part of the mill superintendents, and the readiness of the children and their parents to tell the truth about their ages, in some mills, where conditions were just as bad, the children had been trained to lie. In some of the mills the investigators were forbidden to take photographs on the premises or even to enter the mills. And the practice has already begun in the South of preparing a mill for investigation, when a visit is expected, by hiding the children or sending them away from the mill. The effect of all this upon the childish mind need not be described.

But with the people of the South, lawlessness finally works out its own cure. The very openness and boldness of it finally brings its destruction. The old Ku-Klux-Klan, which through lawlessness saved civilization, finally degenerated in its operations to the avenging of personal injuries, and, presto! it vanished from the face of

the earth. The night riders had their own way in Tennessee until the horrible murder which shocked the country was perpetrated, and night riding will soon be abolished by way of the hempen cord. The lynching of negro brutes has long been condoned as a necessity—is still so condoned in some quarters. But all over the South, beginning in Georgia after the Atlanta riots, law and order leagues are being formed, whose members undertake to denounce the crime of lynching, wherever it occurs, and to aid in the apprehension and prosecution of the offenders. So it will be, I am persuaded, with the reign of lawlessness throughout the South to-day in the matter of the destruction of the lives and the health and the opportunities for usefulness and happiness of its thousands of little children. If I could put our photographs into every Southern home, if what I have said could reach the masses of our people, I know, because I know them, that the response would be swift. If the cotton mill owners themselves would realize the terrible effects of the child-labor system, which they are doing the most to perpetuate in this nation to-day, especially in the South, the most of them would begin housecleaning to-night, or to-morrow morning at the latest.

And in conclusion, I wish to sound again the warning to them that I made two years ago. Already they have lost the moral enthusiasm of a good part of the Southern people that accompanied the tremendous advance of the cotton mill industry, before the facts about child labor began to be known. Already people all over the South are saying that they do not want a cotton mill in their own towns, already investors who have some conscience about their dividends are looking to see if cotton mill money is not blood money. But the cotton mill men are now asking the representatives of the people, in Congress assembled, for the continuation of the high duties on cotton goods, and even for higher duties than now obtain. A gentleman from New England explained to the Tariff Commission, the other day, that the cotton mill was an infant industry, that it was an infant industry in New England, because that section had recently changed from the manufacture of coarse goods to the manufacture of fine goods. That it was an infant industry in the South, because it had only in recent years begun to make cotton goods at all. The same sentiment, that it is an infant industry, was echoed by a Southern cotton manufacturer at a meeting in Charleston, giving the same reasons. I desire to agree with the proposition, as

I interpret it, that the cotton mill business is an infant industry. I am backed up in this opinion by the Census reports, which say: "To a greater extent than any other mechanical or manufacturing industry, the cotton mill furnishes employment for children." And it goes on to show that one employee of the Northern cotton mills out of ten is under sixteen years of age, while in the South one out of three employees is a child, and that the proportion of young children employed is also greater in the South than in the North, instances being given in the Census of child breadwinners as young as five years of age. There were a thousand recorded in 1900 who were under ten. We cordially agree that the cotton mill business is an "infant industry".

Now, in all seriousness, these representatives of the cotton mill interests come to the people of this nation, through their representatives in Congress, and ask for protection and for more protection against their foreign competitors. There would be a universal howl from them if the tariff laws were so violated or evaded as that protection should be denied them. Is it not in order for the people, through their representatives, to say to the cotton mill men: "Your industry is too much of an infant industry to suit our ideas of common humanity. We are not debating the question whether we are willing to pay the same tax or a higher tax upon the cotton goods we purchase, in order to give you protection. But what we demand is that you give some protection to the thousands upon thousands of children who are now employed in the cotton mills of the East and of the South; that you, who are the only obstacle in the way of child-labor reform in the cotton manufacturing states, should cease your opposition and change it to advocacy. You are organized into your associations, and you can easily act together. The legislatures that will deal with this matter are now in session, or soon will be. Let us see what the state legislatures will do before the tariff bill is finally framed by Congress. More than this, since a tariff law, once being passed, is of no value to you without the mighty machinery of the Government at the Customs-House to enforce it, see that you who are demanding protective legislation, enforced by Government, shall give the same obedience to law that you demand of the foreign manufacturer, or the domestic importer, and that you protect these children of ours, both from the enactment of defective laws

and from the violations of such laws as you have. Come with clean hands, asking from us this benefit. Demanding from us protection for infant industries, see that you cease the exploitation of infant industry, and that you grant what you have so long denied, protection to the children who toil in your mills."